ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996	CC Docket No. 98-146

COMMENTS OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

TELECOMMUNICATIONS
RESELLERS ASSOCIATION

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SUMMARY

In this proceeding, the Commission has four tasks. First, the Commission must assess the extent of the current deployment of advanced telecommunications services. Second, the Commission must determine whether such deployment is being undertaken in a reasonable and timely fashion. Third, if such deployment is not being undertaken in a reasonable and timely fashion, the Commission must identify existent barriers to such deployment. And fourth, to the extent such barriers exist, the Commission must decide which of the means identified by Section 706 it should use to accelerate deployment of advanced telecommunications. With respect to the latter obligation, the Commission must ensure that whatever means it selects to accelerate infrastructure investment does not hamper "competition in the local telecommunications market," and is not otherwise inconsistent with the "public interest, convenience and necessity." In answering these question, TRA urges the Commission in the strongest possible terms not to sacrifice resale (either local or long distance) in a misguided effort to hurry to market advanced telecommunications services, the availability of which market forces are finally beginning to drive.

To date, deployment of advanced telecommunications capability by incumbent local exchange carriers has been slow. Two forces have converged to slow the xDSL deployment. The first is innocent; incumbent LECs are infamously slow in rolling-out new technologies. The second is somewhat more nefarious. The incumbent LECs have attempted to game the regulatory process by slow-rolling deployment of advanced telecommunications capability, in the hope of securing a measure of regulatory relief. The first hurdle appears to have been cleared and the second is being overwhelmed by competitive pressures, generating primarily by cable modem services.

The net result is that advanced telecommunications capability is finally being deployed in a reasonable and timely fashion. Market forces will ensure the continued timely deployment of such services. The Commission, accordingly, need not, and should not, take any action to speed the deployment of advanced telecommunications other than to make clear that incumbent LECs will not be relieved of their Section 251(c) network unbundling and resale obligations with respect to advanced services until such time as Section 251(c) has been fully implemented and the Commission determines that forbearance from these requirements is required under Section 10 of the Communications Act of 1934, as amended.

The incumbent LECs are once again beckoning us through the looking glass. The Telecommunications Act is intended to accelerate deployment of advanced telecommunications and information technologies and services to all Americans *by opening all telecommunications markets to competition.*" Section 706 of the Telecommunications Act directs the Commission "to accelerate deployment of [advanced telecommunications] services . . . *by opening all telecommunications markets to competition,*" empowering the Commission to use as a tool "measures that promote competition in the local telecommunications market." Yet the Commission is contemplating, at the behest of the incumbent LECs, measures which will diminish competition in both the local and long distance markets in order to prompt deployment of advanced telecommunications services which is already being driven by market forces. It's time to take a step back and reevaluate.

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COMMENTS OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA"),[1] through undersigned counsel, hereby submits its comments in response to the *Notice of Inquiry* ("*NOI*") issued by the Commission in the captioned docket on August 7, 1998, pursuant to the mandate of Section 706 of the Telecommunications Act of 1996 ("Telecommunications Act")[2] to assess whether high-speed, switched, broadband telecommunications ("advanced telecommunications") capability is being deployed in a "reasonable and timely fashion" nationwide.

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[1] A national trade association, TRA represents more than 650 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services.

[2] 47 U.S.C. § 157 (note); Pub. L. No. 104-104, 110 Stat. 56, § 706 (1996).

I.

INTRODUCTION

Section 706 imposes on the Commission the duty to "encourage the deployment on a reasonable and timely basis . . . of advanced telecommunications capability to all Americans."[3] If, after formal inquiry, the Commission determines that such capability is not being "deployed to all Americans in a reasonable and timely fashion," Section 706 directs the Commission to "take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market."[4] Specifically, the Section 706 authorizes the Commission to "utiliz[e], in a manner consistent with the public interest, convenience and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment."[5]

In this proceeding then, the Commission has four tasks. First, the Commission must assess the extent of the current deployment of advanced telecommunications services. Second, the Commission must determine whether such deployment is being undertaken in a reasonable and timely fashion. Third, if such deployment is not being undertaken in a reasonable and timely fashion, the Commission must identify existent barriers to such deployment. And fourth, to the extent such barriers exist, the Commission must decide which of the means identified by Section 706 it should use to accelerate deployment of advanced telecommunications. With respect to the latter

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[3] Id. at § 706(a).

[4] Id. at § 706(b).

[5] Id. at § 706(a).

obligation, the Commission must ensure that whatever means it selects to accelerate infrastructure investment does not hamper "competition in the local telecommunications market," and is not otherwise inconsistent with the "public interest, convenience and necessity."[6]

The manner in which these issues are resolved is of critical importance to TRA's resale carrier members. TRA is the largest association of competitive carriers in the United States, numbering among its members not only the majority of domestic providers of domestic interexchange and international services, but the majority of competitive local exchange carriers ("LECs"). Recognizing the need to provide their customers with a full range of service offerings, TRA's resale carrier members have been in the vanguard of competitive providers seeking to enter the local telecommunications market. A year ago, a third of TRA's resale carrier members reported that they were providing, or attempting to provide, competitive local exchange service, while an additional third reported plans to enter the local market within twelve months.[7] TRA's resale carrier members are currently providing, or attempting to provide, competitive local exchange service in 44 states. The largest numbers of TRA resale carrier members are operating in local markets in the States of Florida and New York, with secondary concentrations in the States of California, Georgia, Illinois, Kentucky, Massachusetts, North Carolina, Tennessee, Texas, Virginia, Washington and Wisconsin.[8] The majority of TRA's resale carrier members are providing local exchange service exclusively through resale, although roughly a third are making some use of unbundled network

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[6] Id. at § 706(a), (b).

[7] Telecommunications Resellers Association, "1997 Reseller Membership Survey and Statistics" at 1, 15.

[8] Telecommunications Resellers Association, "Member Survey of Local Competition," pp. 2, 4 (April, 1998).

elements.[9] More than a fifth of the local service customers served by TRA's resale carrier members are residential users.[10]

While competitive inroads into the local market to date have been minimal, with incumbent LECs continuing to control roughly 98 to 99 percent of the local markets they serve,[11] what success there has been has been achieved not only through resale, but through non-facilities-based resale. Thus, for example, in evaluating BellSouth Corporation's ("BellSouth") most recent application for in-region, interLATA authority in the State of Louisiana, the U.S. Department of Justice ("DOJ") found that more than 90 percent of the access lines served by competitive LECs were resold lines, and that the large majority of these lines, including the overwhelming majority of lines provided to residential users, were provided by "'pure' resellers (*i.e.*, resellers with no plans for facilities-based market entry)."[12] Hence, resale carriers, particularly smaller providers, that are

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[9] Id. at 5.

[10] Id. at 8 - 10.

[11] *See, e.g.,* Application of BellSouth Corporation, *et al.* Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina, 13 FCC Rcd. 539, ¶ 22 (1997), *recon. pending, appeal pending sub nom.* BellSouth Corporation v. FCC, No. 98-1019 (D.C.Cir. Jan. 13, 1998) ("We recognize that local competition has not developed in South Carolina and other states as quickly as many had hoped. . . . [T]he Department of Justice estimates BellSouth's market share of local exchange in its service area in South Carolina as 99.8% based on access lines"). The U.S. Department of Justice ("DOJ") recently estimated that in the State of Louisiana, "[i]n the aggregate, wireline competitors have about 2% of the local exchange market based upon access lines, while BellSouth still has the remaining 98% in its service area." Evaluation of the United States Department of Justice filed in CC Docket No. 98-121, Appx. A, p. 4 on August 19, 1998. In Ameritech's "in-region State" of Michigan, the Justice Department calculated that "the aggregate market share of CLECs, measured by total number of access lines statewide using all forms of competition (separate facilities, unbundled loops and resale), appears to be between 1.2% and 1.5%." Evaluation of the United States Department of Justice filed in CC Docket No. 97-137, Appx. B, p. 3 on June 25, 1997.

[12] Evaluation of the United States Department of Justice filed in CC Docket No. 98-121, Appx. A, p. 4 on August 19, 1998.

not only currently driving local competition, but are the principal source of alternative local service offerings to residential users.[13]

Access to a full array of service offerings is obviously critical to resale carriers active in the local telecommunications market. As the Commission has recognized, anything that "prevent[s] a new entrant from offering services that consumers perceive to be equal in quality to the offerings of incumbent LECs" stands as a significant obstacle to competitive viability.[14] "[E]limination of these obstacles is essential," the Commission has acknowledged, "if there is to be a fair opportunity to compete in the local exchange and exchange access markets."[15]

If resale carriers are denied the opportunity to acquire advanced services at wholesale rates for resale, they will be placed at a significant competitive disadvantage. A study recently submitted to the Commission by the United States Telephone Association (the "USTA Report") offers the "extremely conservative estimate" that "[b]y year-end 2001, . . . between 10 and 11% of

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[13] While the telecommunications resale industry is a maturing market segment comprised of an eclectic mix of established, publicly-traded corporations, emerging, high-growth companies and newly-created enterprises, the "rank and file" of TRA's membership is still comprised of small to mid-sized carriers serving small to mid-sized businesses and residential users. The average TRA resale carrier member has been in business for five years, serves 10,000 to 20,000 customers, generates annual revenues of $10 to $20 million and has in the neighborhood of 50 to 100 employees. Half of TRA's resale carrier members are non-facilities-based providers, with many of the remainder being "switch-based" only for a portion of their traffic. Source: TRA's "1997 Reseller Membership Survey & Statistics" (Oct. 1997).

[14] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499, ¶ 16 (1996), *recon.* 11 FCC Rcd. 13042 (1996), *further recon.* 11 FCC Rcd. 19738 (1996), *further recon.*, 12 FCC Rec. 12460 (1997), *aff'd/ vacated in part sub. nom.* Iowa Util. Bd v. FCC, 120 F.3d 753 (1997), *writ of mandamus issued* 135 F.3d 535 (8th Cir. 1998), *cert. granted* 118 S.Ct. 879 (Jan. 26, 1998)(Nov. 17, 1997), *pet. for rev. pending* Case No. 97-3389 (Sept. 5, 1997).

[15] Id. at ¶ 18.

households" would subscribe to advanced telecommunications services."[16] Resale carriers would be not only be unable to satisfy the advanced telecommunications needs of this high-end segment of the residential market (as well as its equivalent on the business side), thereby being deprived of a critical revenue opportunity, but would likely be walled off from this market segment altogether.

Given that an xDSL service offering provides both voice and data capability, an xDSL subscriber will have no need for POTS (plain old telephone service). As succinctly stated by the Commission, "[i]f ordinary citizens can access . . . ['highspeed, packet-switched'] networks at high speeds using existing copper wires, a variety of new services and vast improvements to existing services will be available."[17] In other words, a resale carrier offering only POTS would lose entire accounts, not just the data portions of such accounts, to carriers offering advanced telecommunications services for want of a comparable service offering. And this would apply not only to new accounts, but existing accounts, undermining not only what existing competitive progress has been made to date in the local market, but competition in the interexchange market as well. "Customer control" would be ceded to the carrier that could provide the customer with

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[16] Crandall, R. W., and Jackson, C. L., Eliminating Barriers to DSL Service," p. 27 (July, 1998) (submitted as an *ex parte* filing in CC Docket Nos. 98-146 and 98-147 by letter filed by Lawrence E. Sarjeant, Vice President Regulatory Affairs & General Counsel, dated August 12, 1998). Messrs. Crandall and Jackson base their estimate on an assumed monthly rate of $40 or less.

[17] Deployment of Wireline Services Offering Advanced Telecommunications Capability (Memorandum Opinion and Order and Notice of Proposed Rulemaking), CC Docket No. 98-147, FCC 98-188, ¶ 7 (released Aug. 7, 1998).

advanced telecommunications service, jeopardizing existing customer relationships in not only the local, but the long distance market.

To the extent that advanced telecommunications services render POTS obsolete for individual market segments, the universe of potential customers to which non-facilities-based carriers that are denied the opportunity to acquire advanced telecommunications services at wholesale rates for resale will be able to effectively market their services will continue to shrink. Resale will become a less and less effective means of entry into the local market and non-facilities-based resale carriers will become much less of a competitive force in the interexchange market. As a result, not only will opportunities for small business in telecommunications shrink, but the ultimate losers will be the residential and small business consumers to whom resale carriers provide local and long distance service alternatives. As the Commission has acknowledged, resale is "an important entry strategy for small businesses that may lack capital to compete in the local exchange market by purchasing unbundled elements or by building their own networks."[18] And as Chairman Kennard has emphasized, "resale is the key to bringing immediate choice to residential customers."[19]

Accordingly, TRA urges the Commission in the strongest possible terms not to sacrifice resale (either local or long distance) in a misguided effort to hurry to market advanced telecommunications services, the availability of which market forces are finally beginning to drive.

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[18] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499 at ¶ 907.

[19] Remarks by William E. Kennard, Chairman, Federal Communications Commission, delivered to the Practicing Law Institute on December 11, 1997.

II.

ARGUMENT

A. Market Forces are Now Driving the Reasonable and Timely Deployment of Advanced Telecommunications Capability

To date, deployment of advanced telecommunications capability has been slow, primarily due to a lack of competitive pressure on incumbent LECs. Market forces, however, now appear to be driving deployment of advanced telecommunications services by incumbent LECs. Indeed, the principal constraint on such deployment at this time seems to be a belief by incumbent LECs that delay will prompt regulatory relief. The Commission, accordingly, should make clear that incumbent LECs will not be relieved of their Section 251(c) network unbundling and resale obligations with respect to advanced services until such time as Section 251(c) has been fully implemented and the Commission determines that forbearance from these requirements is required under Section 10 of the Communications Act of 1934, as amended.[20] As the *NOI* suggests, the Commission should instead rely "on free markets and private enterprise to deploy advanced services."[21]

Incumbent LECs were notoriously slow in bringing Integrated Services Digital Network ("ISDN") services to market. Until recently, deployment of such services was geographically and demographically limited. Incumbent LECs, however, have come to realize the value of ISDN in generating incremental revenues and enhancing customer retention. For example, incumbent LECs have begun using ISDN to provide them with a competitive edge in entering the

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[20] 47 U.S.C. § 160.

[21] NOI, FCC 98-187 at ¶ 5.

internet services market and competing therein against Internet service providers ("ISPs"). To this end, incumbent LECs are offering Internet access over ISDN lines for the price of a dedicated ISDN line alone.[22] It is not surprising then that the number of ISDN-capable switching offices has increased by over 100 percent over the last five years, and that ISDN-capable offices now serve over 70 percent of access lines.[23]

Incumbent LECs have followed a like path with respect to Digital Subscriber Line ("xDSL") services. The technologies underlying xDSL service have been available now for three decades, yet the broad deployment of these services is only now beginning, driven by newly emerging market forces. As described by one analyst:

> After their long sleep, the RBOCs are waking up to the value of digital subscriber line (DSL) technology just as the cable industry has begun rollouts of their high-speed modems.[24]

There are currently 20 times the number of subscribers to cable modem service – "high-speed data, interactive computer and other Internet-based services offered by cable operators"[25] -- as there are subscribers to xDSL services in the United States.[26] It is estimated that there will be 20 to 30 million cable modem service subscribers by the end of the century.[27] "The cable industry

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[22] "Bell Atlantic to Offer High-Speed Links to Net," Washington Post, Section. E, p. 3 (June 4, 1998); "Bell Atlantic Waives Set-Up Fees for ISDN Internet," ISDN News (June 16, 1998).

[23] Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, Trends in Telephone Service, pp. 88 - 90 (July, 1998).

[24] Sanford C. Bernstein & Co. Inc., Industry Report, pp. 1 - 2 (March 20, 1998). The incumbent LECs were also protecting existent revenue streams such as revenues from T-1 facilities.

[25] Esbin, Beth, Internet Over Cable: Defining the Future in Terms of the Past, p. 77 (August, 1998).

[26] Merrill Lynch Capital Markets, Industry Report, pp. 3 (June 22, 1998).

[27] Id.

is in the midst of a transformation from self-contained, coaxial distribution systems that feature one-way delivery of analog television signals to two-way, interactive broadband systems involving a hybrid of traditional coaxial and modern fiber optic technologies."[28] These new hybrid fiber-coaxial networks "enable the industry to deliver a wide range of telecommunications and information services – including Internet access, telephony, and digital television."[29]

The threat posed by the cable industry is obviously enhanced by AT&T Corp.'s ("AT&T") pending merger with Tele-Communications, Inc. ("TCI"). Once completed, the AT&T/TCI merger will provide AT&T with broadband access into roughly one-third of American homes, allowing it to provide a full spectrum of services without use of incumbent LEC loop facilities.[30] The competitive implications for incumbent LECs of the combination of the largest interexchange carrier and the largest cable television service provider are manifest. As described by AT&T, "AT&T Consumer Services will own and operate the nation's most extensive, broadband local network platform," providing thereby "the broadest set of consumer communications services - including local, long distance, wireless and international communications, cable television, dial-up and high-speed Internet access services – all under the AT&T brand name."[31]

Responding to market forces, incumbent LECs have accelerated their deployment of advanced telecommunications capability. The Commission has recently reported that the Bell

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28 Esbin, Beth, Internet Over Cable: Defining the Future in Terms of the Past at p. 75.

29 Id.

30 "AT&T Engineers Defend Cable Telephony," Communications Today (July 2, 1998); "MIN Media Scoreboard Overview: Will it be Deja Vu All Over Again for Newlywed TCI," Media Industry Newsletter (June 29, 1998).

31 AT&T News Release, "AT&T, TCI to merge, create new AT&T consumer services unit" (June 24, 1998).

Operating Companies ("BOCs") have now installed nearly a quarter of a million of the "bandwidth enhancing terminals" necessary to provide xDSL service.[32] Moreover, the BOCs have joined with a number of other industry participants, including the likes of Microsoft Corp., Intel Corp., Compaq Computer Corp., as well as most DSL hardware vendors, to form a Universal ADSL Working Group ("UAWG") to develop a "splitterless" Asymmetric Digital Subscriber Line ("ADSL") technology -- *i.e.,* "G.lite" -- which would be more forgiving of current infrastructure, have a longer reach than higher-speed DSL technologies, and be less expensive to deploy given that it would not require installation of a unit to split voice and data communications at the customer location.[33] A potential G.lite standard is expected to emerge in 1999 as a result.

US WEST Communications, Inc. ("US WEST") has already deployed Asymmetric Digital Subscriber Line ("ADSL") service on a mass-market basis in hundreds of central offices in 40 cities throughout its region, touting the ability of ADSL service to "let[] customers transmit both data and voice calls over turbo charged existing phone lines, and . . . its . . . affordable high-speed bandwidth and 'plug-and-play' ease of use."[34] GTE Corp. ("GTE") has announced that it will deploy xDSL capability and roll-out associated services – *i.e.,* ADSL and symmetrical digital subscriber line ("SDSL") services -- in 300 central offices in 16 states, completing the final phase of the deployment

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[32] Kraushaar, J. M.., Fiber Deployment Update End of Year 1997, pp. 20 - 21 (July, 1998).

[33] "Incompatibility Woes Drive DSL Compromise," Network World (March 16, 1998).

[34] News Release, US WEST to Launch Second 20-City Wave of Lightening-Fast ADSL Internet Service; Will Complete Deployment on Always-on 'Web-tone' to Homes and Businesses in 40 Cities by July (June 5, 1998).

by the end of 1998.[35] Indeed, GTE has identified as one of its key corporate objective the "offer[ing] of a broad array of services, with increased focus on enhanced data and leading-edge Internet services."[36]

Bell Atlantic is trialing ADSL and has begun to deploy the service in selected areas, with the stated intention of making ADSL available on seven million telephone lines by the end of 1999[37] and 10 to 15 million by 2002.[38] Like GTE, Bell Atlantic has identified as a strategic priority to "accelerate growth and penetration in the data communications market."[39] Indeed, one industry observer noted that "[t]he merger of GTE . . . and Bell Atlantic . . . is more about data than long-distance."[40] SBC Communications Inc. ("SBC") is deploying ADSL capability in 87 central offices in 200 localities in California..[41] And as described by SBC in its 1997 Annual Report, it "launched

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35 "GTE Decides Time is Right for Large-Scale ADSL Roll Out," ISDN News, Vol. 11, No. 8 (April 21, 1998).

36 GTE Annual Report 1997, Chairman's Message, p. 1.

37 "Broadband Data Propels GTE/Bell Atlantic Merger," Broadband Networking News, Vol. 8, No. 16 August 4, 1998); "Bell Atlantic Jumps into ADSL Market with 3 Offers for Home Users," Communications Daily (June 4, 1998).

38 Raymond James & Associates, Inc., Industry Report, p. 1 (March 2, 1998).

39 Id. at p. 1.

40 "Broadband Data Propels GTE/Bell Atlantic Merger," Broadband Networking News, Vol. 8, No. 16 (August 4, 1998).

41 "Telecoms: SBC to Roll Out Californian ADSL Services in July," IAC (SM) Newsletter Database (TM) APT Data Services Ltd. (UK) Network Briefing (May 29, 1998).

FasTrak DSL, based on Asymmetric Digital Subscriber Line technology (ADSL), in a limited number of cities, and . . . exoect[s] a broader launch in 1998)."[42]

BellSouth Corporation ("BellSouth") is trialing ADSL, with commercial deployment expected on a limited basis in 1998 and with a broader roll-out in 1999 as a "mass market service."[43] Indeed, BellSouth has announced its intention to roll-out ADSL in 30 markets during this time frame.[44] Finally, Ameritech Corporation ("Ameritech") is also positioning ADSL as a mass-market offering, projecting the commercial availability of ADSL to seven out of ten of its customers by year-end 2000.[45] According to Ameritech, ADSL and other data services represent the "significant untapped growth potential in . . . [its] core business."[46]

GTE estimates that "industry-wide data revenues are expected to quadruple from roughly $100 million in 1997 to over $400 billion in 2006."[47] A market of this magnitude obviously cannot be ignored by the incumbent LECs. Moreover, the issue is not merely which industry segment will secure the lion's share of data revenues, but which industry segment will win the battle for

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[42] SBC Communications Inc. 1997 Annual Report, "In 1997, our solid growth confirms that SBC is investing in and developing the right business," "Data Strength: SBC balances the need to grow existing services with the desire to be among the first-to-market with new products."

[43] Deutsche Morgan Grenfell Inc., "Last Mile/Wireline Telecommunications Equipment," Industry Report, p. 2 (June 10, 1998); Raymond James & Associates, Inc., Industry Report at 4; "BellSouth to Sell ADSL Service in 30 Markets by End of 1999," ISDN News (June 2, 1998).

[44] "BellSouth to Sell ADSL Service in 30 Markets by End of 1999," ISDN News (June 2, 1998).

[45] Raymond James & Associates, Inc., Industry Report at 3; "Ameritech Interactive Aims to be One-Stop Shop," Communications Today (May 27, 1998).

[46] Ameritech 1997 Annual Report, "Chairman's Letter," p. 2 (Jan. 31, 1998).

[47] GTE Annual Report 1997,"Chairman's Message," p. 3.

customer control. As couched by one industry observer, "[s]ince cable modems are rolling, and, unopposed, will ultimately offer not only high-speed data but voice telephony as well (both internet voice and circuit switched), the BOCs are certainly damned if they don't deploy xDSL."[48]

Two forces have converged to slow the deployment of xDSL capability by incumbent LECs. The first is innocent; incumbent LECs are infamously slow in rolling-out new technologies. The second is somewhat more nefarious. The incumbent LECs have attempted to game the regulatory process by slow rolling deployment of advanced telecommunications capability, in the hope of securing a measure of regulatory relief. The first hurdle appears to have been cleared and the second is being overwhelmed by competitive pressures, generating primarily by cable modem services.

The net result is that advanced telecommunications capability is finally being deployed in a reasonable and timely fashion. Market forces will ensure the continued timely deployment of such services. The Commission, accordingly, need not, and should not, take any action to speed the deployment of advanced telecommunications other than to clearly indicate that further deployment delays by the incumbent LECs will not be rewarded with relief from the resale and network unbundling requirements of Section 251(c).

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[48] Sanford C.. Bernstein & Co. Inc., Industry Report, at p. 3; "Ameritech Interactive Aims to be One-Stop Shop," Communications Today (May 27, 1998) ("Still ['Kate Delhagen, an analyst with Forrester Research'] warns that ADSL and ISDN Solutions are 'two years behind the cable guys . . . The phone line solutions must beat cable access to the neighborhoods and come in with a better price. And with the BOCs, she warns, capability is less a concern than actual execution.").

B. Regulatory Relief Would Slow the Availability of Advanced Telecommunications Services

As discussed above, market forces are sufficient to ensure the continued roll-out by incumbent LECs of advanced telecommunications capability. Incumbent LECs are already lagging behind the cable industry in the deployment of such capability and thus have little choice but to meet the competitive threat posed by cable modem services. Hence, relieving incumbent LECs of their Section 251(c) network unbundling and resale obligations is not necessary to prompt deployment of advanced telecommunications services. Indeed, such regulatory relief would serve only to slow the affordable vailability of xDSL services by effectively eliminating resale providers as an alternative source of such services for consumers who are overlooked or ignored by the incumbent LECs.

Resale carriers have made significant competitive inroads in the interexchange market, and are now beginning to make such inroads in the local market, by identifying underserved market segments and providing such market segments with lower rates and/or better service than would otherwise be made available to them by larger facilities-based providers. As the Commission has recognized, "small businesses are able to serve narrower niche markets that may not be easily or profitably served by large corporations, especially as large telecommunications expand globally."[49] By targeting market segments which have been overlooked or ignored, resale carriers generate competitive pressure on larger providers who can no longer afford to take these underserved market segments for granted. In this manner, resale, among other things, "encourag[es] competitive pricing, . . . discourag[es] unjust, unreasonable, and unreasonably discriminatory carrier practices, . . .

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[49] Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses (Notice of Inquiry), GN Docket No. 96-113, FCC 96-216, ¶ 6 (1996).

promot[es] innovation and the efficient deployment and use of telecommunications facilities, . . . improv[es] carrier management and marketing, . . . generat[es] increased research and development, and . . . positively affect[s] the growth of the market for telecommunications services."[50] Or, as characterized by the Commission "in markets that have not achieved full ompetition," an active resale market "helps to replicate many of the features of competition . . . [and] hastens the arrival of competition by speeding the development of new competitors."[51]

Any action taken by the Commission that would deny resale carriers access to advanced telecommunications services at wholesale rates for resale would obviously diminish these pro-competitive impacts. Admittedly, resale carriers do not contribute to the deployment of the infrastructure necessary to provide advanced telecommunications services. They will, however, facilitate the broad distribution of such services and generate the price and service competition associated with such distribution. If advanced telecommunications services are among the offerings included in their product and service portfolios, resale carriers will make it impossible for incumbent LECs to offer such services on a selective basis, strategically promoting them to some, but not marketing them to others. Just as resale carriers brought competitive prices and services to the small business community in the interexchange market, so too will they bring advanced telecommunications services on a competitive basis to those segments of the local market to which incumbent LECs intentionally or inadvertantly do not market these services. Perhaps even more critically, armed with a full array of service offerings, resale carriers will be in a position to continue

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[50] Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, 11 FCC Rcd. 18455, ¶ 11 (1996), *pet. for recon pending, aff'd sub nom.* Cellnet Comm. v. FCC, Case No. 96-4022 (6th Cir. July 7, 1998).

[51] Id. at ¶ 10.

to generate overall competitive pressures in the local market, providing what, as noted above, has been to date the principal source of competition for incumbent LECs.

Because the bulk of TRA's resale carrier members are small providers, they simply do not have the financial wherewithal to provide an advanced telecommunications service offering absent the availabilty for resale of advanced telecommunications services at wholesale rates. As the Commission predicted, many new market entrants are "unable . . . to bear the financial risks of entry by means of unbundled elements."[52] Resale is the only viable "entry strategy for small businesses that . . . lack capital to compete in the local exchange market by purchasing unbundled elements or by building their own networks."[53] It was undoubtedly to provide a financially viable means for small businesses to participate in the local telecommunications market and to bring to that market the competitive benefits they have brought to underserved segments of the interexchange market that Congress not only identified resale as a market entry vehicle, but designated it a coequal entry strategy, no less important than physical network interconnection or unbundled network access.[54] And as the Commission has recognized, that designation imposes on the Commission the obligation to remove, much less not to create, economic impediments to resale.[55]

Without the availability for resale of advanced telecommunications services at wholesale rates, TRA's resale carrier members would be required to acquire certain facilities and collocate them in multiple central offices in every locale in which they currently provide, or intend

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[52] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499 at ¶ 334.

[53] Id. at ¶ 907.

[54] Id. at ¶ 12.

[55] Id.

in the future to provide, local service. The cost of such a requirement would be prohibitive for the overwhelming majority of TRA's resale carrier members. As described in the USTA Study, the "fixed costs (both capital and administrative) associated with making a central office capable of supporting its first DSL customer . . . include space planning, installing DSL modems and multiplexers at the central office, and installing necessary connections to the data backhaul network and OAM systems," as well as additional "per-customer" costs, including "installation and the cost of the DSL modem."[56] These costs have been conservatively estimated to "run over $1,000 per line and up."[57] Making the point dramatically, US WEST declares "deploying xDSL to a central office requires enormous captial investments,"[58] citing "$73,000 installed" as the cost of but one "basic, 128-user DSLAM."[59] And, of course, these costs will recur in every central office serving customers to which a competitive LEC seeks to market services.

Exacerbating this problem, the cost of deploying xDSL capability in thousands of central offices is prohibitive not merely for TRA's resale carrier members, but for virtually all

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[56] Crandall, R. W., and Jackson, C. L., Eliminating Barriers to DSL Service, at p. 18. Of course, the incumbent LECs for which USTA was calculating costs do not incur the additional costs of collocating in multiple central offices, including per-office non-recurring charges in the tens of thousands of dollars and monthly recurring charges in the thousands. of dollars

[57] Merrill Lynch Capital Markets, Industry Report at 4.

[58] "Petition of U S WEST Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services," filed in CC Docket No. 98-26 on February 25, 1998 at p. 31.

[59] Id. at 35.

competitive LECs.[60] In other words, if incumbent LECs are relieved of their Section 251(c) resale and network unbundling obligations, no alternative providers which might be more inclined to provide for meaningful resale of their xDSL service offerings are likely to emerge on anything approaching a ubiquitous basis. The Commission, accordingly, would have succeeded only in replacing a monopoly local exchange market with an oligopolistic broadband market populated by the incumbent LEC and a cable television ("CATV") service provider. Unless the Commission is prepared to abandon the concept of a dynamic local telecommunications market populated by numerous aggressively competitive providers, it cannot lift Section 251(c) resale and network unbundling requirements as they apply to advanced telecommunications services.

The incumbent LECs are once again beckoning the Commission through the looking glass. The Telecommunications Act is intended to accelerate deployment of advanced telecommunications and information technologies and services to all Americans *by opening all telecommunications markets to competition.*"[61] Section 706 of the Telecommunications Act directs the Commission "to accelerate deployment of [advanced telecommunications] services . . . *by opening all telecommunications markets to competition,*" empowering the Commission to use as a tool "measures that promote competition in the local telecommunications market."[62] Yet the Commission is contemplating, at the behest of the incumbent LECs, measures which will diminish

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[60] *See generally* Bingaman, A. K., Kinkoph, D. W., Burke, T.J., Mathew, R., CLEC Access to xDSL Technology: A Necessary Predicate for Widespread, Competitive Deployment of Broadband Telecommunications Service (June 1998) (filed in CC Docket No. 98-91 on June 24, 1998).

[61] S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996) ("Conference Report") (emphasis added).

[62] 47 U.S.C. § 157 (note); Pub. L. No. 104-104, 110 Stat. 56, § 706 (1996) (emphasis added).

competition in both the local and long distance markets in order to prompt deployment of advanced telecommunications services which is already being driven by market forces. It's time to take a step back and reevaluate.

III.

CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to conclude that advanced telecommunications capability is being deployed in a reasonable and timely fashion and that no further Commission action is required to ensure the timely deployment of such services other than the issuance of a clear statement that incumbent LECs will not be relieved of their Section 251(c) network unbundling and resale obligations with respect to advanced services until such time as Section 251(c) has been fully implemented and the Commission determines that forbearance from these requirements is required under Section 10 of the Communications Act.

Respectfully submitted,

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